

PART 1 – INTRODUCTION

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Chapter 1 – Organization

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Section 1-101 Title.

This Code shall be known and may be cited as the “Land Use and Development Code of the City of Tempe.”

Section 1-102 Purpose and Scope.

- A. **Title.** This code is adopted to implement Tempe’s General Plan and to promote: public health, safety, convenience, aesthetics, and welfare; efficient use of land; sustainable land use and building practices; transportation options and accessibility; crime prevention; timely citizen involvement in land use decision-making; and efficiency in development review and land use administration.
- B. **Purpose and Scope.** Consistent with the above purposes, this code: establishes land use classifications; divides the city into zone districts; imposes regulations, prohibitions and restrictions on land use and development; governs the use of land for residential and non-residential purposes; regulates and limits the height and bulk of buildings and other structures; limits lot occupancy and the size of yards and other open spaces; establishes standards of performance and design; adopts a map of the zone districts; creates boards and commissions for land use and development decisions and defines the powers and duties of the boards and commissions; prescribes procedures for changes of districts, use permits, site plan and land division approvals, variances and other permits; prescribes penalties for violations of the code; and repeals all conflicting regulations.

Section 1-103 **How to Use the Land Use and Development Code.**

The City of Tempe Land Use and Development Code (“this Code”) governs land use and development within the incorporated limits of the City of Tempe. The seven Parts of the Code and appendix are used together in the review of land use and development applications, enforcement of zoning and land use regulations, and implementation of the Tempe General Plan. They are organized as follows:

- A. **Part 1 – Introduction and General Provisions.** In addition to this chapter (Chapter 1 – Organization), Part 1 provides information on the legal construction of the code, enforcement, general provisions (Chapter 2), and information on City officers, boards and commissions (Chapter 3).
- B. **Part 2 – Establish Land Use Districts.** Part 2 identifies the City’s land use (zoning) districts. Every parcel, lot, and tract of land within the city’s incorporated boundaries is located within a land use district, as depicted on the City of Tempe Zoning Map. Four general types of districts are provided: Residential, Commercial and Mixed-Use, and Industrial. Further divisions within each category provide a range of low to high-density development. Overlay districts are provided for special situations or distinct geographic areas.
- C. **Part 3 – Land Use.** Part 3 indicates the land uses that are permitted within each land use district and provides standards for specific types of land uses. The Code is intended to implement the vision and policies of Tempe’s General Plan by reserving land for planned land uses, providing compatibility between different types of uses, and integrating land use and transportation planning.
- D. **Part 4 – Development Standards.** Part 4 provides standards for housing density; building height, bulk and setbacks; vehicle and bicycle parking; landscapes; access and circulation for pedestrians and vehicles; signs; lighting; and transportation demand management. (Note: design guidelines are contained in the Appendix.)
- E. **Part 5 – Overlay Districts.** Part 5 contains the City’s overlay zoning districts. Overlay zones in Tempe include the following: Pedestrian Overlay District, Rio Salado Overlay District, Southwest Tempe Overlay District, and LID Overlay District. The geographic boundaries of these areas are shown on the zoning map.
- F. **Part 6 – Administration and Process.** Part 6 provides all of the application requirements and procedures for obtaining approvals required by this Code.
- G. **Appendix.** The Appendix contains a Code index, application forms, fee schedule, and various administrative rules and guidelines, as may be adopted and updated from time to time by the City departments and divisions. The administrative rules and guidelines are attached to the Land Use and Development Code to provide guidance to applicants, property owners, and City staff; they are not Code standards, although Code standards and approval criteria may refer to these rules and guidelines.

Chapter 2 – General Provisions

- Section 1-201** **Violations and Penalties.**
- Section 1-202** **Repeal, Saving Clause and Application.**
- Section 1-203** **Compliance and Scope.**
- Section 1-204** **Consistency with General Plan.**
- Section 1-205** **Use of Real Property.**
- Section 1-206** **Pre-existing Approvals (Grandfathered Approval).**
- Section 1-207** **Building Permit and Certificate of Occupancy.**
- Section 1-208** **Official Action.**
- Section 1-209** **Fraction Measurement.**

Section 1-201 **Violations and Penalties.**

- A. Violations.** It is unlawful to construct, erect, install, alter, change, maintain, use or to permit the construction, erection, installation, alteration, change, maintenance or use of any house, building, structure, sign, landscape area, parking lot, or fence, or to use or permit the use of any lot or other land contrary to, or in violation of any of the provisions of this Code. Any land use that is specifically prohibited by this code, or is unspecified and not classified by the Zoning Administrator, is prohibited in any district.
- B. Number of Offenses.** Every such person, firm or corporation shall be deemed guilty of a separate offense for each and every day during which any violation is committed, continued or permitted.
- C. Property Owner is Responsible Party.** The owner or person in possession of any property used in violation of this code shall be responsible for any violation thereof, whether or not he or his agent has committed the prohibited act or acts or has neglected to prevent the performance of the prohibited act or acts by another person.
- D. Penalty.** Any person, firm or corporation violating any of the provisions of this Code and any amendments thereto shall be subject to a civil sanction of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1000), or the filing of a class 1 criminal misdemeanor complaint punishable by a fine not exceeding two thousand five hundred dollars (\$2500); or by a term of probation not exceeding three (3) years; or by imprisonment for a term not exceeding six (6) months; or by a combination of such fine, probation or imprisonment.

Section 1-202 Repeal, Saving Clause and Application.

- A. **Repeal.** All Codes or parts of Codes in conflict herewith are hereby repealed, including but not limited to, Code No. 808.
- B. **Saving Clause.** Should any section or provision of this Code be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Code as a whole, or any part thereof other than the part so decided to be unconstitutional or invalid.
- C. **Application.** The repeal of the Codes or parts thereof by this Code shall not:
 - 1. Affect suits pending or rights existing immediately prior to the effective date of this Code;
 - 2. Impair, avoid, or affect any grant or conveyance made or right acquired or cause of action now existing under any such repealed Code or amendment thereto; or
 - 3. Affect or impair the validity of any bond or other obligation issued or sold in constituting a valid obligation of the issuing authority immediately prior to the effective date of this Code.

Section 1-203 Compliance and Scope.

- A. **Compliance.** Land and structures may be used or developed by construction, reconstruction, alteration, occupancy, use or otherwise, only as this Code or any amendment thereto permits. No plat shall be recorded or no building permit shall be issued without compliance with the provisions of this Code.
- B. **Obligation by Successor.** The requirements of this Code apply to the owner(s) of record, persons undertaking the development or use of land, and to those persons' successors in interest.
- C. **Most Restrictive Regulations Apply.** Where this Code imposes greater restrictions than those imposed or required by other rules or regulations, the most restrictive or that imposing the higher standard shall govern.
- D. **Variances.** Variances shall be governed by the provisions of Section 6-311.
- E. **Transfer of Development Standards Prohibited.** No lot area, yard, landscape, open space, off-street parking or loading area, or other feature which is required by this Code for one use shall be a required lot area, yard, landscape, open space, or off-street parking or loading area for another use, except as otherwise specifically allowed by this Code.

Section 1-204 Consistency with General Plan.

All development, uses, and district changes in the City of Tempe shall be consistent with the Tempe General Plan as implemented by this Code. All provisions of this Code shall be construed in conformity with the adopted General Plan.

Section 1-205 Use of Real Property.

Land shall be used only for lawful uses. A lawful use is one that is permitted by this Code and is not prohibited by law. Part 3, Land Use, sets forth the uses permitted by this Code.

Section 1-206 Pre-existing Approvals (Grandfathered).

- A. **Legality of Pre-existing Approvals.** Developments and uses for which approvals were lawfully granted prior to the effective date of this Code, may occur pursuant to such approvals.
- B. **Subsequent Applications.** All uses, development, and permit applications received by the city after *[the effective date]*, including modifications processed under Section 6-304, shall conform to the provisions of this Code.

Section 1-207 Building Permit and Certificate of Occupancy.

- A. **Building Permit.** A building permit shall not be issued until the Development Services Department has determined that the proposal complies with all of the applicable land use and development standards contained in this code.
- B. **Certificate of Occupancy.** To ensure completion of a building in the manner approved by the city, the building shall not be occupied and a use shall not begin until the Development Services Department has issued a certificate of occupancy.
- C. **Prior to Final Completion.** Prior to the final completion of all work, a certificate of occupancy may be issued for a portion of the structure conditioned upon further work being completed by a date certain and guaranteed, as applicable.

Section 1-208 Official Action.

- A. **Official Action.** All officials, departments, divisions, and employees of the city vested with authority to issue permits or grant approvals shall adhere to and require conformance with this Code.
- B. **Notice.** The failure of any person to receive mailed notice or failure to post a notice shall not invalidate any actions pursuant to this Code, except as otherwise determined by the City Attorney.

Section 1-209 Fractions Measurement

Fractions greater than five-tenths ($5/10$) of a whole number shall be rounded up to the next whole number.

Chapter 3 – Officers, Boards and Commissions

- Section 1-301 Purpose.**
- Section 1-302 Zoning Administrator.**
- Section 1-303 Hearings Officer.**
- Section 1-304 Board of Adjustment.**
- Section 1-305 Planning and Zoning Commission.**
- Section 1-306 Redevelopment Review Commission.**
- Section 1-307 Design Review Board.**

Section 1-301 Purpose.

This Chapter sets forth the purpose, duties, organization, and powers of the City boards, commissions, and hearings officer charged in making decisions under this Code. For a complete description of the decision making procedures they follow, please refer to Part 6, Chapter 1, Approval and Appeal Authorities.

Section 1-302 Zoning Administrator.

- A. Zoning Administrator Created.** The Zoning Administrator is the manager of development services or his or her designee.
- B. Zoning Administrator – Purpose, Duties, and Powers.** The Zoning Administrator is charged with the responsibility of interpretation and enforcement of this Code. Interpretation of this Code includes, but is not limited to, clarification of intention, determination of zoning classifications of land uses not specified in this Code, the delegation of processing procedures and requirements, and enforcement of Code provisions. The Zoning Administrator may appoint a hearing officer and designate representatives of the Development Services Department to enforce provisions of this Code. Any land use that is unspecified and not classified by the Zoning Administrator is prohibited in any district. Appeals from the determinations of the Zoning Administrator may be taken to the board of adjustment.

Section 1-303 Hearings Officer.

- A. Hearing Officer – Created and Purpose.** The Hearing Officer hereafter called "HO," shall be appointed by the Zoning Administrator. The HO conducts public hearings on applications and interprets this Code in making decisions on applications.

- B. Hearing Officer – Duties and Powers.** The HO has the power to review and approve, deny, or approve with conditions variances and use permits. The HO also hears appeals regarding the rental housing code and abatements under Tempe City Code. The HO is charged with the following duties, to:
1. Hear requests for use permits;
 2. Hear requests for variances; and
 3. Prescribe in connection with any use permit or variance such conditions as necessary in order to fully carry out the provisions and intent of this Code.
- C. Hearing Officer – Organization.** Meetings of the HO shall be open to the public. The HO will ask if there are public comments on each agenda item, and the public shall be given an opportunity to speak. The minutes of its proceedings, and records of the board's examinations and other official actions, shall be kept and filed with the City Clerk as a public record.
- D. Hearing Officer – Appeals.** Appeals of the decisions of the HO shall be heard de novo by the board of adjustment.

State law reference—Hearing officers in cities, established, appointment, A.R.S. §9-462.08.

Section 1-304 Board of Adjustment.

- A. Board of Adjustment – Created and Purpose.** The Board of Adjustment, hereafter called “BA,” is created to provide relief from the terms of this code and to hear and decide appeals from decisions of the zoning administrative hearing officer or Zoning Administrator.
- B. Board of Adjustment – Powers and Duties.** The BA interprets this Code in hearing and deciding variances, and hearing and deciding appeals from decisions of the zoning administrative hearing officer or Zoning Administrator. The BA shall have the following powers, to:
1. Hear appeals from any decision made by the zoning administrative hearing officer;
 2. Hear appeals when there is an alleged error in any order requirement or decision made by the Zoning Administrator in the interpretation and enforcement of this Code;
 3. Hear requests for use permits and variances, as provided in Section 6-307 and Section 6-311 of this Code. The BA may, in connection with any variance, impose conditions as it deems necessary to fully carry out the provisions and intent of this Code. Violation of any condition shall be a violation of this Code, and such violation shall render the variance null and void.
- C. Board of Adjustment – Organization.**

1. The BA shall consist of seven (7) members and two (2) alternates appointed by the mayor and confirmed by city council. The alternates shall serve at the board meetings whenever regular board members are unable to attend or must decline due to conflict of interest. Each member shall be a resident of the city. The members of the BA shall be appointed for three-year terms, unless sooner removed by the council, and their terms shall be staggered so that the terms of at least two (2), but not more than three (3) members, conclude in any given year. Nothing herein shall affect the expiration of the current terms of the BA. Vacancies for the unexpired term of a member shall be filled by the mayor with city council approval. The members of the BA shall serve without compensation.
2. The BA shall elect a chairperson and vice-chairperson from among its own members who shall have power to administer oaths, take evidence, and set consent agendas.
3. Hearings of the BA shall be open to the public. The chair will ask if there are public comments on each agenda item, and the public shall be given an opportunity to speak. The minutes of its proceedings, showing the vote of each member, and records of the board's examinations and other official actions, shall be kept and filed with the City Clerk as a public record.
4. The BA shall adopt rules of procedure consistent with the provisions of this Code for the conduct of its business and procedure.
5. A quorum consists of four (4) members of the BA. The concurring vote of four (4) members of the BA shall be necessary to reverse any order or decision of an administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass, or to affect any variation from the terms and conditions of this Code. Any other motion shall be governed by Robert's Rules of Order.
6. The Development Services Manager, or his or her designated representative, shall serve ex officio as the secretary of the BA.
7. Whenever members are either unable to attend or must decline due to conflict of interest, they shall give timely notice to the appropriate staff person of the Development Services Department. The staff shall then notify the alternate BA members to fill any vacancy. In the event that such members are not sufficiently available to make a quorum, staff are authorized to act as members on consent agenda items only, and only to the extent that their presence makes a quorum.

D. Board of Adjustment – Appeals. Appeals to BOA decisions shall be to Maricopa County Superior Court in conformance with Section 6-804 of this Code.

State law reference—See A.R.S 9-4 for appeals from board of adjustment.

Section 1-305 **Planning and Zoning Commission.**

- A. **Planning and Zoning Commission – Created and Purpose.** The Planning and Zoning Commission, hereafter called "PZ," is created to make decisions on major site plans, planned area developments, and use permits, and variances and provide analysis and recommendation of the city's general plan, rezoning and Code amendments to the city council. Its purpose is to review all aspects of a proposed and future development including, but not limited to, present and projected growth of the city, site planning and the relationship of the development to the surrounding environment and the community. The PZ recognizes the interdependence of land values, aesthetics and good site planning by promoting harmonious, safe, attractive and compatible development, that is therefore considered to be in the best interest of health, safety and general welfare.

City code reference—See TCC §25-16 et seq., establishing planning and zoning commission, setting officers, meetings, powers and duties.

State law reference—Planning commission hearings, notices, A.R.S. §9-462.04.

- B. **Planning and Zoning Commission – Duties and Powers.** In carrying out the provisions and intent of the General Plan, the commission shall have the powers to:

1. Hear requests for subdivisions, amendments to the General Plan, or Code text or district zoning map, and recommend approval, denial or approval with revisions upon such requests to the city council;
2. Hear requests for use permits, variances, site plans, and planned area developments, and approve, deny, or approve them with revisions;
3. The commission may prescribe in connection with any request in subsections 1-2 above, conditions as the commission may deem necessary in order to fully carry out the provisions and intent of the General Plan and this Code. Violation of any such conditions shall be a violation of this Code and such violation shall render the recommended approval of the request null and void.

- C. **Planning and Zoning Commission – Organization.**

1. The PZ shall consist of seven (7) members and two (2) alternates. The alternates shall serve at the commission meetings whenever a regular board member is unable to attend or must decline due to conflict of interest. All PZ members shall be residents of the city, and shall be appointed by the mayor with the approval of the city council. The members of the PZ shall serve for three (3) year terms, unless sooner removed by the council, and their terms shall be staggered so that the terms of at least two (2), but not more than three (3) members conclude in any given year. Nothing herein shall affect the expiration of the current terms of the PZ. Any vacancy shall be filled by the mayor, with city council approval, for the unexpired term. The members of the PZ shall serve without compensation.

2. The commission shall elect a chairperson and vice-chairperson from among its own members who shall have power to administer oaths, take evidence, and set consent agendas.
 3. Hearings of the PZ shall be open to the public. The chair will ask if there are public comments on each agenda item, and the public shall be given an opportunity to speak. The minutes of its proceedings, showing the vote of each member, and records of the board's examinations and other official actions, shall be kept and filed with the City Clerk as a public record.
 4. The commission shall adopt rules of procedure consistent with the provisions of this Code for the conduct of its business and procedure.
 5. A quorum consists of four (4) members of the commission. The concurring vote of four (4) members of the commission shall be necessary to approve, deny, approve with conditions, or make a recommendation on any application. Any other motion shall be governed by Robert's Rules of Order.
 6. The development services manager, or his designated representative, shall serve ex officio as secretary of the commission.
 7. Whenever a member is either unable to attend or must decline due to conflict of interest, that member shall give timely notice to the appropriate staff person of the Development Services Department. The staff shall then notify the alternate commission member to serve. In the event that such members are not sufficiently available to make a quorum, staff are authorized to act as members on consent agenda items only, and only to the extent that their presence makes a quorum.
- D. Planning and Zoning Commission – Appeals.** Appeals of PZ decisions shall be heard by City Council in conformance with the procedures in Section 6-803 of this Code.

Section 1-306 **Redevelopment Review Commission.**

A. **Established; composition.** There is hereby established the redevelopment review commission to be composed of seven (7) members and four (4) alternate members. This commission will review development projects in the following areas of the city:

1. University-Hayden Butte redevelopment area; and
2. Rio Salado-McClintock redevelopment area



B. **Appointment of members; terms of office.**

1. The members and alternates of the commission shall be appointed by the mayor with the approval of the city council. Members consist of one current member from the planning and zoning commission, one current member from the board of adjustment, one current member from the design review board, one current member from the Rio Salado citizen advisory commission, one current member from the parks and recreation board and two (2) members selected from residents of the city. The four (4) alternate members consist of one current member from the planning and zoning commission, one current member from the board of adjustment, one current member from the design review board and one current member from the Rio Salado citizen advisory commission. The alternates shall serve at the commission meetings whenever a regular commission member is unable to attend or must decline due to a conflict of interest.
2. The term of office for all commission members appointed from either the planning and zoning commission, board of adjustment, design review board, the Rio Salado citizen advisory commission or the parks and recreation board shall be the equivalent time period of the term that member is serving on either the planning and zoning commission, board of adjustment, design review board, the Rio Salado citizen advisory commission or the parks and recreation board, not to exceed three (3) years beginning on the date of appointment by the mayor and city council. The term of office of all

remaining commission members is three (3) years beginning on the date of appointment by the mayor and city council.

3. Any vacancies shall be filled for the unexpired term of the member whose office is vacant in the same manner as such member received original appointment.
- C. **Compensation.** Members of the redevelopment review commission shall receive no compensation for their services as commission members.
- D. **Officers.** The chairperson and such other officers, as the commission by its rules of procedure may prescribe, shall be selected by the commission members at the first meeting of the commission following the first day of January of each year and shall serve until the 31st day of December of the same year. The chairperson shall appoint the chair and membership of all subcommittees of this commission.
- E. **Powers and duties.** The redevelopment review commission shall have the following powers and duties:
1. Except for those powers granted to the zoning administrator and hearing officer as defined in Tempe's zoning ordinance, the redevelopment review commission shall exercise the powers granted to the planning and zoning commission, the board of adjustment and the design review board consistent with applicable law for those boards and commission for any development action in the:
 - a. University-Hayden Butte redevelopment area; and
 - b. Rio Salado-McClintock redevelopment area.
 2. Meetings of the commission shall be open to the public and the commission will accept public testimony on all cases before the commission. The minutes of its proceedings, showing the vote of each member and records of its examinations and other official actions, shall be kept and filed in the office of the development services department as a public record;
 3. The commission shall not adopt rules of procedure inconsistent with the provisions of this chapter for the conduct of its business and procedure;
 4. The affirmative vote of four (4) members is required to approve any application or to decide any matter before the commission. Four members constitutes a quorum of the commission;
 5. Except for appeals, the rules and procedures for advertising, notification and scheduling of hearings before the commission shall be consistent with the legal standards required for action before the planning and zoning commission, the board of adjustment or the design review board depending upon the individual case subject. If any conflict exists between the provisions

of this chapter regarding advertising, notification or scheduling and another applicable law then the stricter standard applies;

6. A person aggrieved by a decision of the redevelopment review commission or a taxpayer, officer or department of the municipality affected by a decision of the redevelopment review commission may file, at any time within fifteen (15) days after the commission has rendered its decision, an appeal with the city clerk. The city council will hear the appeal in accordance with procedures adopted by the council and may affirm or reverse, in whole or in part, or modify the commission's decision; and
7. This division, providing for the operation of the redevelopment review commission, is only in effect for a period of three (3) years after its original effective date, unless further extended by appropriate city council action.

Section 1-307 Design Review Board.

- A. **Design Review Board – Created and Purpose.** The Design Review Board, hereafter called “DRB,” is created to review design aspects of proposed developments to encourage, protect, and enhance the functionality, attractiveness, accessibility, and safety of the City of Tempe. The city recognizes that the creation of a desirable environment throughout the city for residents, business and industry is a prime requisite for the preservation of property values, for the development of compatible uses and buildings, and for the preservation of public health, safety and general values. The DRB recognizes the interdependence of land values, aesthetics and good site planning by promoting harmonious, safe, attractive and compatible development, that is therefore considered to be in the best interest of health, safety and general welfare.
- B. **Design Review Board – Duties and Powers.** The DRB shall have the following powers, to:
 1. Conduct public meetings to review requests for development plan approval on industrial and commercial developments, and multi-family developments with at least four (4) dwellings. The DRB does not review single-family dwellings except for single family dwellings in planned area developments. Multi-family developments with three (3) or fewer dwellings are reviewed by the Development Services Department staff.
 2. Review site plans, exterior elements of buildings, landscapes, signage, additions to existing buildings, and modifications to a site.
 3. Decide to approve, approve with revisions, or deny development plan applications described in subsection 1.
 4. The DRB shall prescribe in connection with any request for a development plan approval such conditions as the board may deem necessary in order to

fully carry out the provisions and intent of this Code. Violation of any such conditions shall be a violation of this Code and such violation shall render the recommended approval of the request null and void.

C. Design Review Board – Organization.

1. The DRB shall be composed of seven (7) members and two (2) alternates. The alternate shall serve at the board meetings whenever a regular board member is unable to attend or must decline due to a conflict of interest. The members shall be selected from residents of the city by the mayor with the approval of the city council. At least two (2) members of the DRB and an alternate shall be architects, landscape architects or otherwise qualified by design background, training or experience. The terms of the members shall be for three (3) years and shall be so staggered that the terms of at least two (2), but not more than three (3), members shall conclude in any given year. Nothing herein shall affect the expiration of the current terms of the DRB. Any vacancy shall be filled by the city council for the unexpired term. The members of the DRB shall serve without compensation.
2. The DRB shall elect a chairperson and vice-chairperson from among its own members who shall have power to conduct board meetings, take public comment, and set consent agendas.
3. Meetings of the DRB shall be open to the public. The chair will ask if there are public comments on each agenda item, and the public shall be given an opportunity to speak. The minutes of its proceedings, showing the vote of each member, and records of the board's examinations and other official actions, shall be kept and filed with the City Clerk as a public record.
4. The DRB shall adopt rules of procedure consistent with the provisions of this Code for the conduct of its business and procedure.
5. Four (4) members shall constitute a quorum of the board and four (4) affirmative votes shall be required to approve an application. Any other motion shall be governed by Robert's Rules of Order.
6. The development services manager, or designated representative, shall serve ex officio as secretary of the DRB, but shall have no vote.
7. Whenever a member is either unable to attend or must decline due to conflict of interest, that member shall give timely notice to the appropriate staff person of the Development Services Department. The staff shall then notify the alternate DRB member to serve. In the event that such members are not sufficiently available to make a quorum, staff are authorized to act as members on consent agenda items only, and only to the extent that their presence makes a quorum.

D. Appeals. Appeals of DRB decisions shall be processed using the procedures in Section 6-805 of this Code.